Editor's note: Reconsideration denied by Order Dated Sept. 20, 1988; Appealed -- aff'd, sub nom. Ptarmigan Co. v. U.S. Civ.No. A88-467 (D.Alaska Mar. 30, 1990), appeal filed, No. 90-35369 (9th Cir. Apr. 29, 1990), aff'd, May 15, 1991, petition for rehearing denied 8/16/91

JACK STANLEY

IBLA 86-1585 Decided August 15, 1988

Appeal from decision of the Anchorage District Office, Bureau of Land Management, declaring mining claims null and void ab initio (AA-58611 through AA-58618).

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

   Mining claims located on lands that are withdrawn from mineral entry both by an act of Congress and by a duly published public land order on the date of location are properly declared null and void ab initio.

2. Mining Claims: Lands Subject to--Mining Claims: Location--Mining Claims: Recordation--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

   Where lands covered by mining claims are withdrawn from future entries "subject to valid existing rights," the withdrawal attaches, as of the date of the withdrawal, to all land described by the withdrawal, including the lands covered by the mining claims. So long as the claims are valid, however, the withdrawal is ineffective. However, when the claims terminate, the withdrawal becomes effective, eo instanti, to the lands covered by the entry, thus closing them to future entries. No further action is required to effect the withdrawal.

3. Mining Claims: Lands Subject to--Mining Claims: Location--Mining Claims: Recordation--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

   The location date for mining claims situated on lands withdrawn from mineral entry by Congress for inclusion

in the Wrangell-St. Elias National Park will not relate back to mining claims located prior to the withdrawal, where the previous mining claims were conclusively deemed to be abandoned and void for failure to file copies of proofs of labor or notices of intent to hold as required by sec. 314 of the Federal Land Policy and Management Act of 1976.

4. Administrative Procedure: Generally--Appeals: Generally--Rules of Practice: Appeals: Generally

A "petition to intervene" in a pending appeal is properly denied where the party seeking to participate does not offer comments on the decision on appeal, but instead challenges an earlier decision by BLM that has been previously considered by the Board of Land Appeals.

APPEARANCES: Jack B. Patterson, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Jack Stanley has appealed from a decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), declaring the Rambler Nos. 1 through 8 lode mining claims (AA-58611 through AA-58618) null and void ab initio and rejecting recordation filings for these claims. The Rambler claims were located between April 12 and May 7, 1986, and are situated in protracted sec. 16, T. 7 N., R. 13 E., Copper River Meridian. Copies of location notices were filed with BLM on May 9, 1986.

In declaring the claims null and void ab initio, BLM held that, effective March 15, 1972, Public Land Order No. 5178 withdrew the township in which the Rambler claims are situated from all forms of appropriation under the public land laws, including location and entry under the mining laws, reserving the lands "for study and review by the Secretary of the Interior." 37 FR 5579 (Mar. 16, 1972). Additionally, the entire township was withdrawn from mining by Congress, subject to valid existing rights, effective December 2, 1980, pursuant to sections 201, 206, and 701 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. || 410hh-4 and 1132 note (1982), which designated the lands as the Wrangell-St. Elias National Preserve. Because the lands were withdrawn, BLM ruled, they were segregated from mineral entry at the time Stanley located the Rambler claims, and BLM accordingly declared them null and void ab initio, that is, "without legal effect from the beginning."

[1] It is very well established that mining claims that are located on Federal lands that are withdrawn from mineral entry on the date of location are null and void ab initio. Couser Explorations, Inc., 100 IBLA 293 (1987); John C. Neill, 80 IBLA 39 (1984); Philip A. Cramer, 74 IBLA 1 (1983); Grace P. Crocker, 73 IBLA 78 (1983); Leo J. Hottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenheizer v. Udall, 432 F.2d 328 (9th Cir. 1970). The lands covered by the Rambler claims were withdrawn from mineral entry

on the date of their location both by an act of Congress and by a duly published public land order. Accordingly, BLM properly declared them null and void. As the claims were not located on lands subject to mineral entry, BLM also properly rejected the tendered filings.

[2] Stanley's argument that the claims were excluded from the operation of the withdrawals because the lands had retained their mining character when surrounding ground became part of the park preserve in 1980 is rejected. The location of a mining claim does not remove the claimed lands from the ownership of the Federal Government or from management by authorized agencies of the Federal Government. United States v. Rizzinelli, 182 Fed. 675, 684 (N.D. Idaho 1910). Where lands covered by mining claims are withdrawn from future entries "subject to valid existing rights," the withdrawal attaches, as of the date of the withdrawal, to all land described by the withdrawal, including the lands covered by the mining claims. So long as the claims are valid, however, the withdrawal is ineffective as to the lands embraced by the claims. However, when the claims terminate, the withdrawal automatically becomes effective, eo instanti, to the lands covered by the entry, thus closing them to future entries. No further action is required to effect the withdrawal. See Jack Z. Boyd (On Reconsideration), 15 IBLA 174, 81 I.D. 150 (1974); Paxton J. Sullivan, 14 IBLA 120 (1973); Solicitor's Opinion, 55 I.D. 205, 208 (1935).

In his statement of reasons, Stanley notes that he located these claims on the exact ground as that covered by mining claims located by his father, Kirk Stanley, in the 1960's, prior to the effective dates of the two withdrawals. As Stanley indicates, BLM had issued a decision in December 1983 declaring Kirk Stanley's claims abandoned and void because he failed to file affidavits of assessment work or notices of intent to hold the claims in 1982 as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744(a) (1982), and implementing Departmental regulations. BLM's decision was affirmed by this Board on March 17, 1986, in Ptarmigan Co., 91 IBLA 113 (1986). 1/

According to Stanley, following receipt of our adverse decision in Ptarmigan Co., supra, he located new claims on the same lands covered by his father's voided claims in an effort to preserve his family's interest in the area. Stanley notes that many miners who have lost claims because of section 314 of FLPMA, "began anew" and submits that he should also be allowed to mine where his father's company mined before its claims were declared abandoned.

Justice Marshall, in affirming the constitutionality of the recordation requirements of FLPMA in United States v. Locke, 471 U.S. 84 (1985), acknowledged that there could be disparity in consequences of the failure to

1/ Stanley refers to his father's claims as AA-35536 through AA-35543. However, we did not address claims AA-35537 and AA-35538 in Ptarmigan Co., supra. The reason for this discrepancy is not apparent from the present record. The discrepancy does not affect our holding.

comply with these requirements, but nonetheless expressly recognized that voided claims could not be revived when the lands on which they are situated were prospectively closed to mineral entry, even though the closure occurred while the claims were valid:

> [Claimants] received a letter from the BLM Nevada State Office informing them that their claims had been declared abandoned and void due to their tardy filing. In many cases, loss
> of a claim in this way would have minimal practical effect; the claimant could simply locate the same claim again and then rerecord it with BLM. In this case, however, relocation of appellees' claims, which were initially located by appellees' predecessors in 1952 and 1954, was prohibited by the Common Varieties Act of 1955, 30 U.S.C. | 611; that Act prospectively barred location of the sort of minerals yielded by appellees' claims. Appellees' mineral deposits thus escheated to the Government.

Id. at 90. The situation in the present case is identical. Kirk Stanley's claims were located in the 1960's, and, effective in 1980, section 706 of ANILCA, prospectively barred location of mineral claims on these lands under the general mining laws. Thus, following the voiding of Kirk Stanley's claims, relocation of new claims on the withdrawn lands was prohibited.

This Board has previously considered a case similar to the instant matter. In McCarthy Mining & Development Co., 87 IBLA 172 (1985), we
ruled that the location date for a mining claim situated on lands with-
drawn from mineral entry by ANILCA for inclusion in the Wrangell-St. Elias National Park will not relate back to a mining claim located prior to the withdrawal, where the previous mining claim was conclusively deemed to be abandoned and void pursuant to section 314 of FLPMA. We also held in that decision that the failure to comply with the recordation requirements of FLPMA extinguished the claims located before the date of the withdrawal,
and that the relocation of the new claims after the date of the withdrawal did not relate back prior to the intervening withdrawal. 2/ Stanley has
not shown any convincing reason to depart from this holding. 3/

2/ Accord, Mac A. Stevens (On Reconsideration), 85 IBLA 33 (1985) (holding that location date does not relate back to a mining claim located prior to the withdrawal of the lands, where the previous claim was conclusively deemed to be abandoned and void pursuant to section 314 of FLPMA for fail-ure to file a copy of the notice of location within 90 days of the date of location); Frank Melluzzo, 71 IBLA 178 (1983) (holding that no amended location of a mining claim is possible if the original location was void); and R. C. Jim Townsend, 18 IBLA 100 (1974) (holding that a party may not rejuvenate or reestablish rights to a void mining claim by relocating a new mining claim after the lands have been closed to mineral entry).

3/ To the extent not specifically addressed in this decision, Stanley's arguments on appeal have been considered and rejected.

[4] Finally, we note that on March 24, 1988, Kirk Stanley, president of Ptarmigan, Inc., filed a motion to intervene in this matter, and a statement of reasons. It is evident from the statement of reasons that Kirk Stanley is merely attempting to relitigate the question of the validity of Ptarmigan's earlier claims (AA-36413 through AA-36420). As noted above, these claims were declared abandoned and void by BLM, and this Board affirmed BLM's decision on March 17, 1986. Ptarmigan Co., supra. Mining claims AA-36413 through AA-36420 are not at issue in the instant appeal, and Kirk Stanley's motion to intervene is therefore denied.

Insofar as the request to intervene might be regarded as a petition to reconsider our decision in Ptarmigan Co., supra (putting aside the fact that it is not styled as such), it would be denied as untimely, as it was not filed until more than 2 years after the date of our decision. 43 CFR 4.21(c), 4.403; see Fletcher De Fisher (On Reconsideration), 101 IBLA 212 (1988).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge